

LETTER OPINION
99-L-94

October 19, 1999

Honorable Roger Johnson
Commissioner of Agriculture
600 East Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

Dear Commissioner Johnson:

Thank you for your letter asking whether certain amendments in S. Bill 2009 gave the Pesticide Control Board the authority to fund a position to work on Canada-U.S. pesticide harmonization issues. See 1999 N.D. Sess. Laws ch. 31. Section 3 of S. Bill 2009 states:

The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the pesticide control board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and other uses of pesticides for minor crops, minor uses, and ~~emergency uses~~ other uses as determined by the board.

Section 3 of S. Bill 2009 is codified at N.D.C.C. § 4-35-06.3. You further mentioned that S. Bill 2009 included money for a one-half full-time employee (FTE) position in the Department of Agriculture. You asked whether the amendment to section 3 allows the Pesticide Control Board ("Board") to use this one-half FTE position to work on harmonization issues.

The phrase "other uses" in section 3 follows a specific list of purposes that the Board may carry out. Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language. N.D.C.C. § 1-02-03. "The rule of *ejusdem generis* ["of the same kind"] states that where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects specifically enumerated." Resolution Trust v. Dickinson Econo-Storage, 474 N.W.2d 50, 52 (N.D. 1991). "Stated another way, '[u]nder the principle of *ejusdem generis*, general words following particular and specific words are not given their natural and ordinary sense, standing alone, but are confined to persons and things of the same kind or genus as those enumerated.'" Id. at 52-53.

Therefore, the plain and ordinary <PAGE NAME="p.L-95">meaning of the phrase "other uses" should be determined in light of its setting within N.D.C.C. § 4-35-06.3. Although "other uses" by the Board may include hiring someone to work on Canada-U.S. pesticide harmonization issues, the remainder of N.D.C.C. § 4-35-06.3 limits the phrase "other uses" to those purposes similar to "conducting or commissioning studies, investigations, and evaluations regarding the registration and other uses of pesticides for minor crops, [and] minor uses." The analysis thus far still does not resolve the issue.

Section 4-35-06.3 does not define what is meant by the phrase "other uses as determined by the board." Because the phrase "other uses" could mean different things to different people (as evidenced by your letter), the statute is ambiguous. See Northern X-ray Co., Inc. v. State ex rel. Hanson, 542 N.W.2d 733, 735 (N.D. 1996) (statutes are ambiguous if they are susceptible to differing but rational meanings). Since the statute is ambiguous, extrinsic aids may be utilized to interpret it. N.D.C.C. § 1-02-39.

N.D.C.C. § 1-02-39 lists a number of extrinsic aids that may be used in construing an ambiguous statute, including the statute's legislative history. "[T]he cardinal rule of statutory interpretation is that the interpretation must be consistent with legislative intent and done in a manner which will accomplish the policy goals and objectives of the statutes." O'Fallon v. Pollard, 427 N.W.2d 809, 811 (N.D. 1988).

A review of the legislative history reveals extensive discussions about Canada-U.S. pesticide harmonization issues. The Legislature created a specific entity -- the crop harmonization committee -- to deal with this issue. See 1999 N.D. Sess. Laws ch. 31, § 11. At a conference committee hearing on the bill, committee members addressed the relationship between the Pesticide Control Board and the crop harmonization committee:

Chairman Solberg: Is there something we can do to help the department as far as registration and labeling? I'm not sure how we can do it.

Senator Naaden: The Pesticide Control Board has control of the Minor Use funds. All monies in this fund are appropriated on a continuing basis to the board. Why don't we use that board?

Chairman Solberg: I think we are, but what this task force is proposed to do is different from what the control board is doing.

Rep. Lloyd: Mr. Chairman you are 100% right on that. They will augment the board and take it a step further than what the current board does. I view the current board as more policy makers. I don't think the Director of Extension and <PAGE NAME="p.L-96">the Director of the RE Station have the time to get involved in the types of things this task force should get involved in. I want some action. I want the industry involved. The task force has an industry person, farmers, and legislative individuals who will all be proactive.

Hearing on S. Bill 2009 Before the Appropriations Conf. Comm., 56th N.D. Leg. (April 10, 1999) (committee minutes). These discussions indicate that the work of the Board and the crop harmonization committee were to augment one another, but not necessarily overlap.

At a subsequent hearing, committee conferees more clearly defined the purpose for the one-half FTE position:

Rep Boehm: You stated nothing has been done for years. We have a board, that hasn't done anything. That's why we created this task force to accomplish harmonization.
Senator Naaden: My point is, you still have to go through that Pesticide Control Board to get any of this done.
Rep Boehm: We need someone to do the work. These people on the board do not have additional time.
Senator Solberg: We discussed adding a half-time FTE to help with the license labeling.
Rep. Boehm: Moved adding \$45,000 from the Environmental and Rangeland Protection Fund for a half-time FTE position for minor use product registration activities. This includes writing prepared federal section 18 and 24 of crop pesticide registration for minor use labeling. If the department feels they have a half-time on staff now they want to make full time, that is agreeable.

Hearing on S. Bill 2009 Before the Appropriations Conf. Comm., 56th N.D. Leg. (April 12, 1999) (committee minutes).

The Appropriations Conference Committee ultimately recommended increasing salaries and wages by adding an "ag chemical registration position." Report of Conference Committee on S. Bill 2009, 56th N.D. Leg. (April 13, 1999). This money was to come from "the environmental and rangeland protection fund for a .5 FTE position for minor use product registration activities, including writing and

Honorable Roger Johnson
October 19, 1999
Page 4

preparing federal Sections 18 and 24 crop pesticide registrations for minor use labeling." Id. The amendment process described in the previous paragraphs clearly indicates that the Legislative Assembly did not intend this one-half FTE position to be used for working on harmonization issues. Rather, that work was delegated to the crop harmonization committee only to be "augmented" by the Board. The one-half FTE position was authorized "for minor use product <PAGE NAME="p.L-97">registration activities, including writing and preparing federal Sections 18 and 24 crop pesticide registrations for minor use labeling." Id. Thus, it is my opinion that the Board may not use the minor use pesticide fund to hire personnel to work on pesticide harmonization issues.

Sincerely,

Heidi Heitkamp
Attorney General

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